

## TITLE 19. Public Safety

### Division 2. Office of Emergency Services Chapter 6. Disaster Assistance Act

#### §2900. Definitions.

- (a) “Act” means the California Disaster Assistance Act (Government Code Sections 8680-8692).
- (b) “Betterment” means any work performed by a local agency which exceeds restoring a facility to its predisaster design. Betterment also includes repairs to damaged public real property which are necessary to mitigate a predisaster condition for which the local agency had a predisaster requirement to mitigate or correct.
- (c) “Current Codes, Specifications and Standards” means those applicable codes, specifications, or standards for the construction and design of public real property, which have been adopted by an applicant agency on or before the date of the disaster occurrence.
- (d) “Director” means the Director of the Office of Emergency Services or his duly authorized representative.
- (e) “Director's Concurrence” means the authorization of financial assistance for costs to repair, restore, reconstruct or replace facilities belonging to local agencies damaged as a result of disasters, based on a local emergency proclamation that has been accepted by the director.
- (f) “Disaster” means a fire, flood, storm, tidal wave, earthquake, terrorism, epidemic, or other similar public calamity that the Governor determines presents a threat to public safety.
- (g) “Eligible Applicants” means any local agency, as that term is defined in this section.
- (h) “Emergency” means any occasion or incident for which, in the determination of the Governor, state assistance is needed to supplement local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the state.
- (i) “Emergency Programs” means those programs designed for short term immediate response to provide needed life-saving, public health, safety, and property protective measures.
- (j) “Emergency Work” means that work which is performed immediately before, during, or after a disaster event to protect public health, safety or property, and to provide temporary facilities for the restoration of essential public services.
- (k) “Federal Assistance” means aid to disaster victims or local agencies by the federal government pursuant to federal statutory authorities.
- (l) “Hazard Mitigation” means any cost effective measure which will reduce the potential for damage to a facility from a disaster event. Hazard mitigation, for the purposes of the state public assistance program, does not include work undertaken to meet current codes, specifications, or standards.
- (m) “Incident Period” means the time interval during which the disaster-causing incident occurs. No state assistance under the Act shall be approved unless the damage or hardship to be

alleviated resulted from the disaster-causing incident which took place during the incident period or was in anticipation of the incident. The incident period is determined by the director.

(n) “Local Agency” means any city, city and county, county, county office of education, community college district, school district, or special district.

(o) “Local Emergency” means a condition of extreme peril to persons or property proclaimed as such by the governing body of the affected local agency in accordance with Section 8630.

(p) “OES” means the Office of Emergency Services.

(q) “Permanent Work” means that restorative work which must be performed through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and current applicable codes, specifications, and standards.

(r) “Predisaster Design” means that capacity or measure of productive usage for which a facility could be used immediately prior to a disaster.

(s) “Preliminary Damage Assessment” means a process which may be used to determine the impact and magnitude of damage and the resulting unmet needs of local agencies following a disaster. The Preliminary Damage Assessment may be performed by a team consisting of a representative(s) from the affected local agency and a representative(s) from the Office of Emergency Services, in addition to a federal representative(s) if federal assistance is to be pursued.

(t) “Project” means the repair or restoration, or both, other than normal maintenance, or the replacement of, real property of a local agency used for essential governmental services, including, but not limited to, buildings, levees, flood control works, channels, irrigation works, city streets, county roads, bridges, and other public works, that are damaged or destroyed by a disaster. “Project” also includes those activities and expenses allowed under subdivisions (a), (c), and (d) of section 8685. Except as provided in section 8686.3, the completion of all or part of a project prior to application for funds pursuant to this chapter shall not disqualify the project or any part thereof.

(u) “Project Application” means the written application made by a local agency to the director for state financial assistance, which shall include: (1) in the case of a public facilities project, all damage to public real property which resulted from a disaster within the total jurisdiction of the local agency making application; or (2) in the case of a street and highway project, all damage to streets and highways which resulted from a disaster within the total jurisdiction of the local agency making application; or (3) other activities and expenses as allowed in section 8685.

(v) “Project Approval” means the process when a Damage Survey Report (DSR) (OES 90, Rev. 1/03, incorporated by reference) is approved by OES for a scope of work and costs. For construction projects, approval will not occur until after the review and acceptance of plans and specifications by the appropriate reviewing building official. A project approval also constitutes an obligation of funds to the applicant agency.

(w) “Public Facility” means the following facilities owned or leased by a local agency: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-federal aid street, road, or highway; any federal aid street, road, or highway for which Federal Highway Administration Emergency Relief (ER) Program funds have been sought, any other public building, structure, or system, including those used for education, recreational, or cultural

purposes; or any park. Unimproved natural features are not considered facilities unless engineered and maintained to provide a public purpose. Lands used for agricultural purposes are not facilities.

(x) “Public Real Property” means any facility owned or leased and operated or maintained by a local agency through monies derived through taxation or assessments. The term “assessment” also includes the sale by a local agency of such services as water and power.

(y) “School District” means any and all public school districts, regardless of kind or class, except a community college district. School district includes those districts defined in sections 80 through 87 of the Education Code.

(z) “Site” means a building or facility, or group of contiguous buildings or facilities with common ownership and within a single jurisdiction. For facilities without a street address, a site is any area of continuous damage of a similar nature within a geographically defined area, and within a single jurisdiction.

(aa) “Special District” means a unit of local government in the state (other than a city, county, or city and county) with authority or responsibility to own, operate or maintain a project, including a joint powers authority established under section 6500 et seq., of the Code.

(bb) “State Agency” means the Department of Transportation, the Department of Water Resources, the Department of General Services, the Department of Health Services, the Department of Finance, or any other state agency or office. The Department of Transportation's area of responsibility concerns streets, roads, bridges and mass transit repairs. The Department of Water Resources' area of responsibility concerns dams, levees, flood control works, channels, irrigation works, and other similar projects. The Department of General Services' area of responsibility concerns buildings, sewer, water systems, and district road and access facility construction, alteration, repair and improvement thereof, and all other projects. The director shall assign applications to the appropriate agencies for investigation.

(cc) “State Eligible Costs” means all project costs eligible under section 8680 et seq., of the Government Code, and shared costs of projects deemed eligible for federal public assistance, after offsetting applicable credits. Applicable credits refer to receipts or reductions that offset or reduce eligible costs. Credits include, but are not limited to: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance settlements, refunds or rebates, and funding provided by other sources. Local agencies are expected to first seek federal funding and to exhaust federal appeal rights before seeking state funding. No state assistance will be provided if the local agency has, through its own negligence, failed to pursue maximum federal participation in funding projects.

(dd) “State of Emergency” means the duly proclaimed existence of conditions of disaster or extreme peril to the safety of persons and property, within the state, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, or earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a State of War Emergency, which conditions, by reason of their magnitude are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city, and require the combined forces of a mutual aid region or regions to combat.

## NOTE

Authority cited: Section 8682.9, Government Code. Reference: Disaster Assistance Act, Chapter 7.5, Division 1, Title 2 (Section 8680, et seq.) Government Code.

## HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of History 1 (Register 91, No. 16).
4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).
5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.
6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).
7. Amendment of chapter heading filed 8-3-94; operative 9-2-94 (Register 94, No. 31).
8. Amendment filed 8-30-2001 as an emergency; operative 8-30-2001 (Register 2001, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-2001 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 8-30-2001 order, including further amendment of section, transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).
10. Change without regulatory effect amending chapter 6 heading, adding subsections (a) and (f), repealing subsection (n), relettering subsections and amending newly designated subsections (o) and (t)-(v) and Note filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

## §2910. Cost Eligibility.

### (a) General Provisions:

- (1) Local agency costs or expenditures are eligible for state financial assistance provided such expenditures relate directly to an eligible disaster event;

(2) Expenditures included in local agency applications for state financial assistance must be reasonable and in accordance with a local agency's standard cost allocation procedure, and,

(3) No state financial assistance will be provided to a local agency for damages caused by its own negligence. If negligence by another party results in damages, assistance shall be provided, but shall be conditioned on agreement by the applicant agency to cooperate fully with the state in all efforts necessary to recover the costs of such assistance from the negligent party.

(b) Wages:

The following wage costs are eligible for state financial assistance:

(1) Local agency personnel costs incurred as a result of the disaster are eligible for funding or reimbursement, excluding the straight or regular time salaries and benefits of an applicant's permanently employed personnel performing emergency work.

(2) Overtime granted as compensatory time off (CTO) is reimbursable and shall be based on the standard rate (i.e., regular cash rate) for overtime pay; and,

(3) Wage additive costs, including retirement contributions, vacation, sick leave and other fringe benefit costs assessed against the regular wage rate of employees engaged in disaster related work activities.

(c) Local Share:

Matching fund assistance for cost sharing required under federal public assistance programs is an eligible cost. Public assistance programs include supplementary federal assistance for local agencies, other than assistance for the direct benefit of individuals and families. Such assistance shall also meet the eligibility requirements of the Act.

(d) Engineering and Feasibility Studies:

(1) The director shall approve an estimate for the cost of basic engineering services, when determined necessary for construction projects.

(2) The costs of special engineering services, such as surveys, soil investigations, or feasibility studies for repair vs. replacement determination, will be approved separately when necessary to accomplish eligible work.

(3) Any reimbursement for architectural, construction management, or engineering services shall be based on reasonable actual costs.

(e) Equipment:

The director shall authorize reimbursement of certain types of equipment costs as follows:

(1) Actual equipment rentals;

(2) Equipment costs for applicant-owned equipment shall be claimed based on the applicant's own rate schedules or in the absence of such a rate schedule, on current Department of Transportation (CALTRANS) Labor Surcharge and Equipment Rental Rates. Equipment rates must cover normal costs of lube, repair, overhaul, depreciation, interest, insurance, storage, and

taxes. For self-powered equipment, the schedule must include fuel and oil. The director reserves the right to audit claims for the reimbursement on applicant-owned equipment.

(3) Equipment mobilization and demobilization costs for applicant-owned equipment, including transportation costs to and from the disaster sites. Equipment operation time should be supported by use logs and operator time sheets; and,

(4) Stand-by time shall be allowed for rental equipment, if determined cost effective by the director. Stand-by time shall not be allowed for applicant owned-equipment.

(f) Interagency Assistance Agreements:

Costs for work performed under interagency assistance agreements, including but not limited to contracts or cooperative agreements or assistance-for-hire agreements between local governments or between local governments and state agencies, are eligible for reimbursement, but are limited to those costs of the responding entity for which an eligible applicant is legally obligated to pay. Eligible costs shall include only those reasonable costs invoiced or billed in accordance with reimbursement provisions contained in such interagency assistance agreements.

(g) Other Direct Costs:

The following local agency costs shall be considered direct costs for purposes of these programs:

(1) Salaries and benefits of first-line supervisors. No administrative salary and benefit costs above first-line supervision may be claimed as a direct cost;

(2) Actual travel and per diem costs;

(3) The costs of supplies and materials used during response activities; and,

(4) Other direct costs which may be considered eligible by the director, including costs relating directly to the disaster which are not otherwise funded by federal or state disaster assistance programs, or which are not expressly prohibited by federal or state law, federal regulations, these regulations or prohibited by the federal or state constitution.

(h) Indirect and Administrative Costs:

A local agency will receive a ten percent (10%) administrative allowance, applied as a percentage against the total approved state share to cover reasonable indirect costs and the necessary costs of requesting, obtaining, auditing, and administering state disaster assistance funds.

(i) Ineligible Costs:

A local agency shall not receive state assistance for the following types of costs or expenditures:

(1) Expenditures for personal property such as books, furniture, and equipment;

(2) Income, revenues, wages, or rents lost by a local agency due to the disaster event;

(3) Expenditures on normal or deferred maintenance activities;

- (4) Expenditures for facility betterment beyond current codes, specifications, and standards of present day construction. Betterment costs must be presumed by the local agency.
- (5) Expenditures for hazard mitigation projects not required by federal or state laws, or regulations;
- (6) Expenditures for legal services, fees, or penalties necessitated or caused by lawsuits or any out-of-court settlements pertaining to a disaster;
- (7) Expenditures for insurance required by the Federal Emergency Management Agency's (FEMA) regulations or for damage to a portion of a facility covered by insurance;
- (8) Expenditures for rights-of-way, easements, or land acquisition;
- (9) Losses for which an entity has legal means of recoupment;
- (10) Interest or other debt expense incurred on funds borrowed to meet disaster related expenses;
- (11) Expenditures for damages caused by the local agency's own negligence;
- (12) Expenditures prohibited by federal or state law, federal or state regulations, or the federal or state constitution; or,
- (13) An increase in the state share which is a result of missed deadlines, penalties or which otherwise results from non-compliance with the requirements of other public assistance programs related to the disaster.

#### NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8680 et seq; 8685, 8685.2, 8685.6, 8686, 8686.4, 8686.6, 8686.8, 8687.2 and 8687.4, Government Code.

#### HISTORY

- 1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.
- 2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.
- 3. Editorial correction of History 1. (Register 91, No. 16).
- 4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).
- 5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.

6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).
7. Amendment of section and Note filed 8-30-2001 as an emergency; operative 8-30-2001 (Register 2001, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-30-2001 order, including further amendment of section, transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).
9. Change without regulatory effect amending subsection (c) filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

#### §2915. Contracting and Procurement.

##### (a) General Provisions:

- (1) Applicants receiving federal disaster assistance funds must comply with applicable federal contracting and procurement requirements contained in Title 44, Code of Federal Regulations (CFR), part 13, Sections 13.35 and 13.36, and Office of Management and Budget Circulars (OMB) A-102 (Revised 10/7/94, As Further Amended 8/29/97) and A-110 (Revised 11/19/93, As Further Amended 9/30/99). Funds withdrawn by the federal government, due to non-compliance with the applicable federal contracting and procurement requirements shall result in a loss or reduction of state cost-sharing assistance. The state shall not provide additional funding to an applicant to substitute for federal funding withdrawn as a result of noncompliance with federal regulations.
- (2) Any work performed by a state agency, at the request of a local agency, shall be agreed upon in writing and subject to the state Public Contracts Code. Work performed by a local agency shall be subject to the laws governing the performance of such work by the local agency and any other applicable state or federal laws. Neither the state nor any officer or employee thereof shall have any responsibility in connection with any work performed by a local agency.
- (3) Any contract executed between the local agency and the director, pursuant to the Act, shall contain a provision under which the local agency agrees to hold the state harmless from damages resulting from the work for which funds are allocated; and
- (4) A payment bond is required on all contracts involving expenditures in excess of twenty-five thousand dollars (\$25,000), pursuant to sections 3247 and 3248 of the Civil Code, on any public work for a political subdivision including, but not limited to, improvements and replacements of any building, road, bridge or other structure.

##### (b) Special Provisions for Reclamation and Levee Maintenance Districts:

- (1) All work must be bid as required under applicable state or federal laws or regulations or, including 44 CFR, part 13, whichever is the more restrictive. Public Contracts Code, section 20924 requires that districts seeking state or federal assistance comply with the procurement requirements of such state or federal program, if they are more restrictive than the requirements of section 20920 et seq. If the district's governing board determines that a district is not required to competitively bid work, that determination must be documented in writing with a full statement of the reasons why bids are not required. The determination to bid or not bid shall be



approved by the district board prior to contracting, where possible. If such prior approval is not possible, the board must ratify the decision within 15 days after the decision is made.

(2) If the district's governing board determines that a sole source contract is legally justified or that an emergency exists which justifies an exemption, then the district shall utilize informal bids, or shall, at arm's length, negotiate the best possible price. All contracts will be in writing, approved by the district board, and supported by documentation justifying the price and detailing the negotiations as required in 44 CFR, part 13, or other appropriate law or regulation. All contracts must clearly indicate the specific work to be performed and the time and location of performance of the work, and require the maintenance of adequate source records for audit. Contracts must also provide separate unit prices for emergency and non-emergency work, when the contract covers work which will be done under both emergency and non-emergency conditions.

(3) A written contract shall clearly define the responsibility and the compensation of the engineer. The district's governing board must assure adequate contract administration. This shall include, but not be limited to, such items as sticking barges, checking quantities of material and labor, and maintaining adequate auditable records.

(4) In all contracts for work, services, or materials, the contractor must maintain and retain for three years after notification of the start of the retention period by the director, auditable source documents and records, which shall be available for audit by federal or state auditors.

(5) Districts must maintain separate accounts for registered warrants covering approved work and such other records and accounts as are necessary to assure that all approved work is paid for prior to final reimbursement from the state or FEMA.

(6) Districts will certify and provide OES with verification that none of the costs reimbursed by the state under the Act or by FEMA have been claimed or paid through any other state or federal program, including but not limited to work performed under the Delta Levees Subvention Program, Water Code sections 12980 et seq.

## NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8682.6, 8682.7, 8685.7, 8685.8 and 8690.6, Government Code.

## HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of History 1. (Register 91, No. 16).

4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).
5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.
6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).
7. Amendment of subsections (a)(1) and (b)(4) filed 8-30-2001 as an emergency; operative 8-30-2001 (Register 2001, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-30-2001 order, including further amendment of section, transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).
9. Change without regulatory effect amending subsection (b)(6) filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

## §2920. Emergency Work.

### (a) General Provisions.

- (1) Emergency measures undertaken to save lives, to protect public health and safety, and to protect property in a jurisdiction proclaimed to be in a state of emergency by the Governor, are eligible for state financial assistance under section 8685.2 of the Code;
- (2) When immediately necessary and no lesser emergency work is feasible, permanent restorative work on facilities damaged or destroyed by a disaster or emergency may be expedited as emergency work; and,
- (3) Compliance with codes, specifications, and standards applicable to permanent restoration work is not necessary for emergency work. When a state of emergency has been proclaimed and circumstances are such that permanent restoration of a facility can be quickly accomplished, or when no practical emergency alternative is available, eligible work should be considered under permanent restoration categories. For typical emergency work not requiring formal plans and specifications, consulting engineering services shall not normally be approved.

### NOTE

Authority cited: Section 8682.9, Government Code. Reference: Section 8685, Government Code.

### HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of History 1. (Register 91, No. 16).

4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).

5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.

6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).

## §2925. Debris Removal.

### (a) General Eligibility

(1) Debris removal from publicly and privately-owned lands and waters, undertaken in response to a state of emergency proclamation by the Governor is eligible for state financial assistance; and,

(2) For purposes of this program, the removal of debris from private property shall be reimbursed only when there is an immediate threat to public health and safety. In a case where reimbursement for debris removal from private property is authorized by the director, the following requirements shall apply, unless waived in part or full by the director:

(A) The property owner must remove all disaster-related debris from the property to the curb or public right-of-way;

(B) The local agency must obtain a signed statement from the property owner to the effect that the property owner does not have insurance covering the removal of the disaster-related debris; and,

(C) The local agency must have a signed statement from the property owner giving the local agency the right of entry and absolving the local agency and the state of any liability relative to removal.

### (b) Criteria

Debris removal shall be considered necessary when removal will:

(1) Eliminate immediate threats to life, public health, and safety;

(2) Eliminate immediate threats of significant damage to improved public or private property; or,

(3) Be necessary for the permanent repair, restoration, or reconstruction of damaged public facilities.

### (c) Examples of Eligible Work

- (1) Removing debris such as pieces of destroyed buildings, structures, signs, or broken utility poles;
- (2) Removing loose or broken sidewalks and driveways; or,
- (3) Removing fallen trees.

#### NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8685 and 8685.2, Government Code.

#### HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of History 1. (Register 91, No. 16).
4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).
5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.
6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).
7. Change without regulatory effect amending subsection (a)(2) filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

#### §2930. Emergency Protective Measures.

##### (a) General Eligibility

Emergency protective measures, undertaken in response to a disaster event resulting in a state of emergency proclamation by the Governor, to save lives, to protect public health and safety, and to protect improved property are eligible for state financial assistance under Section 8685.2 of the Code.

(b) Criteria

Emergency protective measures shall include, but are not limited to, search and rescue, demolition of unsafe structures, warning of further risks and hazards, public information on health and safety measures, and actions necessary to remove or to reduce immediate threats to public property, or to private property when in the public interest, or temporary protective measures designed to protect public or private property from further damage.

(c) Examples of Eligible Work

The state shall provide financial assistance for equipment and labor costs, and the costs of supplies and materials used during disaster response activities:

- (1) Buttrressing, bracing or shoring to protect structures in imminent danger of major damage or to protect the general public;
- (2) Construction of emergency flood protective levees where immediately required for the protection of life and improved eligible property. Work by individuals to protect their homes or businesses is not eligible;
- (3) Sandbagging to protect life and property;
- (4) Boarding up windows and other enclosures of public buildings to afford protection against the elements and to safeguard from looting;
- (5) Out-of-pocket expenses for safety barricades, signs, and warning devices;
- (6) Cost of extra personnel required during the emergency period. Justification for additional staffing may be requested by the director; and,
- (7) Extraordinary costs associated with emergency snow removal.

(d) Limitations on Emergency Protective Measures

- (1) Repairs to levees shall be limited to that work necessary to stop the infiltration of water through a levee to prevent the collapse of a levee, to prevent sloughing of the slopes of the levee, to stop local overtopping, or to protect a levee from attack by wind-driven waves or erosive currents; and,
- (2) Work that is immediately necessary as the result of a disaster and directly related to eligible permanent work shall be approved by the director as emergency protective measures. Examples of such work include temporary repairs to damaged buildings or structures, barricading areas to protect damaged property or to direct traffic, costs of emergency hook ups, tapping the water system of an adjoining community until normal supply facilities become operational, by-passing damaged sections of the distribution system until emergency repairs can be made, hooking into privately owned or other public power sources pending repairs to the applicant's generating plant, or cleaning of storm and sanitary sewer lines; and,
- (3) Emergency protective facilities installed will be eligible for removal under the Act, only when such facilities are directly affecting the operations of, or access to, public facilities required by the applicant in its normal day-to-day operation. Examples include temporary dikes and levees, security fences, and barricades.

(4) In a case where reimbursement for the demolition of a damaged public facility or a privately owned building is approved by the director, the following standards shall apply, unless waived, in part or in full by the director, explaining in writing the facts and reason for the waiver:

(A) The local agency must clearly possess the legal authority and responsibility to demolish the damaged facility. The local agency must also show that such demolition does not constitute a “taking” which would require the payment of compensation to the property owner;

(B) The local agency requesting approval of building demolition of privately owned-buildings must be able to demonstrate that the property owner has no other source of funding to pay for structure demolition;

(C) The local agency must have inspected each building and determined it to be a health or safety hazard. The local agency must have a certification to this effect signed by the appropriate agency official;

(D) The local agency must have a signed statement from the property owner to the effect that the property owner does not have insurance covering the damage or the demolition of the building;

(E) The local agency must have a signed statement from the property owner giving the local agency the right of entry and absolving the local agency and the state of any liability relative to demolition and removal;

(F) The local agency must also comply with any other applicable state or federal health and safety regulation, law, or general requirements; and,

(G) Eligibility is limited to the cost of demolishing designated buildings to the top of the foundation, removal and hauling debris to the waste-site, and back-filling of basements to a safe condition.

#### NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8685 and 8685.2, Government Code.

#### HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of History 1. (Register 91, No. 16).

4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).

5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.

6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).

7. Change without regulatory effect amending subsections (c)(6), (d)(2) and (d)(4) filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

#### §2940. Permanent Work.

##### (a) Repair and Restoration of Public Facilities

Disaster related repair or permanent restoration work is eligible for state financial assistance if the following criteria are met:

(1) The damaged facility is public real property owned or leased by the applicant agency, and in service, at the time of the disaster. This restriction does not apply to a facility temporarily removed from service due to repair, maintenance, restoration, or reconstruction activities;

(2) The repair or restoration of the damaged facility is determined to be in the general public interest;

(3) The repair or restoration work must be of a permanent nature, in accordance with current codes, specifications, and standards;

(4) Reimbursement for the repair or restoration of eligible public facilities shall be based on the design of the facilities as they existed immediately prior to the disaster, and in conformity with current codes, specifications, and standards. Any costs associated with betterment of the facility must be contributed by the local agency; and,

(5) Prior to completing any betterments to a facility for which state funds have been authorized or repair or restoration under this chapter, the applicant shall submit a written request to the director, or is/her designee, which details the additional work to be completed.

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##### (b) Replacement of Public Facilities

The director will approve funding for the replacement of a public facility, provided the following criteria are met:

(1) The costs to repair disaster damages to the public facility exceed fifty percent (50%) of the total cost of constructing a replacement facility and it is not feasible to repair the damaged facility; or,

(2) The damaged facility cannot be restored or repaired in such a manner that the facility can perform the function for which it was being used immediately prior to the disaster;

(3) If the director authorizes replacement of a public facility, the local agency may increase the square footage of the facility replaced, but the cost of the betterment of the facility, to the extent that

it exceeds the cost of repairing or restoring the damaged or destroyed facility, shall be borne and contributed by the local agency;

(4) Funding for a public facility which is replaced through a grant of state assistance shall be based on the cost to replace the predisaster capacity of the predisaster facility, with allowances for current codes, standards, and specifications; and,

(5) Prior to completing any betterments to a facility for which state funds have been authorized for replacement under this chapter, the applicant shall submit a written request to the director, or his/her designee, which details the additional work to be completed.

## NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8685 and 8686.4, Government Code.

## HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.

. . Editorial correction of History 1. (Register 91, No. 16).

4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).

5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.

6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).

7. New subsections (a)(5) and (b)(5) filed 8-30-2001 as an emergency; operative 8-30-2001 (Register 2001, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-2001 or emergency language will be repealed by operation of law on the following day.



8. Certificate of Compliance as to 8-30-2001 order, including further amendment of section, transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).

9. Change without regulatory effect amending subsections (a)(5), (b), (b)(3) and (b)(5) filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

#### §2945. Streets, Roads, and Bridges.

##### (a) General Eligibility

Existing streets, roads, and bridges, maintained with Highway Users Tax Funds by an eligible applicant, are eligible for permanent repair or replacement.

##### (b) Limitations of Eligibility

(1) Permanent restoration of damaged or destroyed facilities will be on the basis of the design of such facility as it existed immediately prior to the disaster, in conformity with current codes, specifications, and standards to accommodate present day traffic; and,

(2) If no standards are applicable, repair or replacement shall be limited to the costs of returning the facility to predisaster condition based on the existing design. If damages to a facility are not extensive and a facility is economically repairable, repairs only will be approved.

##### (c) Criteria for Roads and Streets

(1) Hard road surfacing damaged to an extent as to make patching impractical may be replaced to its predisaster condition to provide an all-weather road to permit normal flow of traffic;

(2) Roads and streets in urban areas where necessary repairs are required from curb to curb are eligible;

(3) Items such as manholes and curbs damaged by the disaster are eligible;

(4) Public sidewalks are eligible for repair or replacement if they are within the right-of-way and are the responsibility of the local agency;

(5) Repairs to alleys which provide an essential service and are the responsibility of the local agency are eligible;

(6) Repair or replacement of traffic control signs and signal lights are eligible;

(7) Gravel and unimproved roads subject to width limitations are eligible providing the repairs do not constitute an improvement over their predisaster condition; and,

(8) Shoulders and embankments are eligible for repair or replacement.

##### (d) Criteria for Bridges and Crossings

(1) Construction of bridges and crossings will follow the local agency's current standard of design. Estimates will be prepared on a state DSR (OES 90, Rev. 1/03, incorporated by reference) with a Bridge Survey completed as an attachment;

(2) Publicly owned water and sewer lines or utility services carried by an existing bridge which has been damaged or destroyed are eligible. The scope of proposed work and estimated cost shall be shown separately on a state DSR (OES 90, Rev. 1/03, incorporated by reference);

(3) Where an essential bridge has been destroyed or damaged to an extent that repairs are not technically or economically feasible, the inspector may recommend an alternate method of replacement. If it can be shown that current codes, specifications, and standards are being met and no greater costs are involved, the applicant may construct a culvert or low-water crossing at the original location or alternate site. If an alternate site is chosen, the cost of acquisition of real estate or right-of-way for relocation purposes must be borne by the applicant; and,

(4) Bridges (including foot bridges) not owned by and not the direct responsibility of the local agency are ineligible.

(e) Criteria for Culverts and Low-Water Crossings

(1) Capacity of a replacement culvert will be based on the predisaster design, in conformity with present-day standards; and,

(2) The cost of replacing a damaged or destroyed culvert or crossing with one that will more adequately serve the present and future public needs may be authorized, but the cost of the betterment, to the extent that it exceeds the cost of repairing or restoring the damaged or destroyed facility is the responsibility of the local agency. Estimates will be made on the basis of the design of the facility as it existed immediately prior to the disaster, in conformity with current codes, specifications, and standards.

NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8685 and 8686.6, Government Code.

HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of History 1. (Register 91, No. 16).

4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).

5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.

6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).
7. Amendment of subsections (d)(1)-(2) filed 8-30-2001 as an emergency; operative 8-30-2001 (Register 2001, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-30-2001 order transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).
9. Change without regulatory effect amending subsections (d)(1)-(2) filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

## §2950. Dikes, Levees and Flood Control Works.

### (a) General Eligibility

Flood control, drainage, irrigation works, pumping stations, and facilities which are operated or maintained by an eligible applicant and which do not come within the provisions of another statutory authority are eligible for permanent repair, restoration, or replacement.

### (b) Limitations of Eligibility

(1) Earth filled dikes and levees shall be limited to the previously existing elevation and general cross-section. Finish shall not exceed rough grading. Rip rap eligibility will be limited to replacement; however, the placement of additional rip rap may be allowed if justified by an immediate threat to the location under repair, as an emergency measure;

(2) Appurtenant essential structures are eligible if consistent with the purpose for which the repairs are intended. An impervious core is eligible if definitely required and justified;

(3) Repairs may also include restoration of cutoff walls or closure structures. Repair of erosion damage which was a direct result of the ongoing disaster may be made to the extent necessary to ensure structural integrity of the dike or levee; and

(4) Repair or restoration of the roadway along the top of the structure required to provide access for maintenance and flood control operations will not exceed that which previously existed.

### (c) Criteria for Drainage Ditches and Canals

(1) Restoration or repair of drainage ditches and canals which were damaged or destroyed as a result of the disaster, when the responsibility of the local agency, are eligible.

### (d) Criteria for Irrigation Works and Facilities

(1) Permanent repair, restoration, or replacement of irrigation works and facilities shall be limited to the reconstruction necessary to restore the facility to its predisaster condition, in accordance with current codes, specifications, and standards. Finish generally shall not exceed rough grading. Rip rap or other protective measures may be included only when justified by threat of immediate erosion damage. Appurtenant essential structures such as drops, checks, siphons, and flumes shall be constructed of appropriate materials consistent with the purpose for which the structures are intended;

(2) Essential buildings pertinent to the operation of the irrigation facilities are eligible under the standards outlined in section 2955 of these regulations; and,

(3) When it is not feasible to reconstruct or repair damaged facilities in their predisaster location, or when savings can be realized by relocation, replacement facilities may be constructed at alternate locations. If an alternate site is chosen, the cost of acquiring real estate or rights-of-way is the responsibility of the applicant.

#### NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8680.4, and 8686.4, Government Code.

#### HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of History 1. (Register 91, No. 16).

4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).

5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.

6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).

#### §2955. Public Buildings.

##### (a) General Eligibility

Existing local agency buildings, except inactive or abandoned facilities, maintained by an eligible applicant are eligible for state assistance for permanent repair or replacement costs. This restriction does not apply to facilities that are temporarily removed from service for repairs or maintenance.

## (b) Limitations of Eligibility

Permanent restoration or repair eligibility for a damaged or destroyed public facility will be on the basis of design of such facility as it existed immediately prior to the disaster, in conformity with current codes, specifications, and standards. The extent of reimbursement shall be controlled by the facility's use and the function it performs for the community. The following information is furnished for guidance:

- (1) Damage to the exterior of a building shall be repaired with like materials unless less expensive material is available;
- (2) Nonstructural and fixed equipment, such as floors, walls and ceilings, doors and windows, and roofing, is eligible for repair when damaged;
- (3) Mechanical and electrical equipment, heating systems, plumbing fixtures, and air conditioning systems are eligible for repair or replacement to the extent of returning the facility to its predisaster condition. Air conditioning will not be approved where it did not exist prior to the disaster event, unless required by current codes, specifications, and standards;
- (4) Fixed appliances, dishwashers, garbage disposals, water heaters, light fixtures, and sump pumps plumbed into the structure are considered as a part of the structure and if damaged or destroyed are eligible for repair or replacement;
- (5) Electrical wiring, plumbing and utilities, if damaged as a result of the disaster, shall be repaired to conform to local codes;
- (6) Replacement of a building may be eligible when a determination has been reached that it would not be economically or technically feasible to make repairs. A suitable replacement structure equal in functional requirements to the facility damaged or destroyed, conforming to current codes, specifications, and standards, may be authorized. In such instances, adequate justification will be detailed in the state DSR (OES 90, Rev. 1/03, incorporated by reference), including comparable cost estimates. The inspector shall ascertain if the entire destroyed facility was being utilized by the applicant prior to the disaster and make appropriate comments on the state DSR (OES 90, Rev. 1/03, incorporated by reference). Functional requirements for the new structure shall take precedence over any design factors;
- (7) The state cost estimate for the replacement facility will be based on the floor area of the original building, except in those instances where local codes require a specific footage or area per person; and then only to the extent of the capacity originally intended in the original structure;
- (8) Relocation from the original site may, in some instances, be more advantageous and economical. In such cases, the acquisition costs of land, easements or rights-of-way is the responsibility of the local agency; and,
- (9) Increased capacity and added operating features are betterments and will be borne by the local agency. Construction materials shall be those types required consistent with the location, usage, and function of the replacement. Long-term maintenance expenses are not considered a controlling factor.

## NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8685 and 8686.4, Government Code.

## HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of History 1. (Register 91, No. 16).
4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).
5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.
6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).
7. Amendment of subsections (b) and (d)(6) filed 8-30-2001 as an emergency; operative 8-30-2001 (Register 2001, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-30-2001 order transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).
9. Change without regulatory effect amending subsection (b)(6) filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

## §2960. Utilities.

### (a) General Eligibility

Utilities include but are not limited to such services as water, power, and sewage facilities.

### (b) Limitations of Eligibility

- (1) Repair or replacement of public utilities shall be limited to work necessary to permit a safe resumption of service, in accordance with current codes, specifications, and standards;
- (2) By-passing, cleaning, or demolition, when required in making permanent repairs, may be considered but only to the extent that it relates to the permanent repair; and,

(3) Repair or replacement of public utility distribution systems shall be of the same general type of materials as previously existed. If more economical and satisfactory alternate materials which meet current codes, specifications, and standards are available, they shall be used. Essential buildings and related equipment appurtenant to the operation which are classed as real property which were damaged or destroyed as a result of the disaster are eligible.

#### NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8680.4 and 8685, Government Code.

#### HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of History 1. (Register 91, No. 16).

4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).

5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.

6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).

#### §2965. Other Projects.

Certain other items, such as repairs to or the replacement of parks or other recreation facilities, district roads and access facilities, or costs associated with temporary facilities, may be eligible for state assistance, subject to the repair or replacement criteria referenced above. Other eligible costs may include any assistance deemed necessary by the director as stated in writing explaining the basis for the finding of necessity.

#### NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8680.4 and 8685, Government Code.

## HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.
3. Editorial correction of History 1. (Register 91, No. 16).
4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).
5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.
6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).
7. Change without regulatory effect amending section filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

### §2970. Application Process.

#### (a) Basic Procedures:

- (1) To be eligible for assistance under the Act, a city, county or city and county must proclaim a local emergency within ten (10) days of the actual occurrence of a disaster and the proclamation must be acceptable to the director, or the Governor must make a State of Emergency Proclamation. When a county has proclaimed a local emergency based upon conditions which include both incorporated and unincorporated territory of the county, it is not necessary for the cities to also proclaim the existence of a local emergency independently;
- (2) The city, county or city and county shall provide the director written notification of a proclamation of local emergency and request for a director's concurrence or State of Emergency proclamation within ten (10) days of the actual occurrence of a disaster. Upon receipt of the city, county or city and county's notification, the director shall issue either (A) approval or denial of the director's concurrence or recommendation that the Governor proclaim a state of emergency, or (B) written notification to the affected city, county or city and county indicating the approximate timeframe for rendering a recommendation. A Preliminary Damage Assessment (PDA) may be scheduled with the affected local agency to obtain additional information. If it is determined that state assistance will be provided, the affected local agency will be notified by the director of such assistance as well as the application procedures;
- (3) The director, or his/her designee, shall notify the affected city, county or city and county of the incident period beginning and end dates;



(4) A local agency must submit a Project Application (OES 126, Rev. 1/03, incorporated by reference) to OES within sixty (60) days after the date of a local proclamation. The director or his/her designee may extend this deadline only for unusual or extraordinary circumstances. When filing an application for assistance, an applicant must attach a List of Projects (OES 95, Rev. 7/01, incorporated by reference). Formats other than the OES 95 may be substituted if they contain the required information. Prior to application approval by the state, an applicant shall also submit or have on file a resolution designating an authorized representative. In the event of a federal declaration of a major disaster or emergency, the submittal of a federal Request for Public Assistance (FEMA 90-49, Rev. 9/98, incorporated by reference) within the specified federal application period, will meet the state application requirement;

(5) After receipt of the application and a list of projects, OES will, if necessary, schedule an on-site review of all submitted items, which will be singly detailed on separate DSRs (OES 90s, Rev. 1/03, incorporated by reference). Under normal circumstances, the state will complete DSRs (OES 90s, Rev. 1/03, incorporated by reference) with cost estimates for an applicant agency within sixty (60) days from the date of the local agency application. When a public facility, damaged in a prior disaster event, has not been completely repaired or restored at the time of a subsequent disaster event, the total damage and scope of work for both disasters, excluding the prior disaster work already completed, will be detailed on a DSR. In addition, a separate DSR will be prepared to deobligate any unexpended funds previously provided for the incomplete portion of work;

(6) Upon approval of eligible costs, OES will send copies of the state DSRs (OES 90s, Rev. 1/03, incorporated by reference) and a computerized summary of all approved costs to the applicant's authorized representative for review and approval. OES will send the completed application to the applicant's designated authorized representative for review and approval with an Applicant Approval Form (CDAA Form 3a, Rev. 1/03, incorporated by reference);

(7) Upon receipt of an Applicant Approval Form (CDAA Form 3a, Rev. 1/03, incorporated by reference), OES will process an allocation for the state share of approved costs through the State Controller's Office. An authorized representative's signature on the approval form allows the state to process an allocation of funds. An applicant does not forfeit the right to a fair hearing or an appeal, by signing the Applicant Approval Form;

(8) If the Governor proclaims a state of emergency or a catastrophic failure due to excessive damage to Federal Aid System (FAS) Roads, the Governor may request emergency funds pursuant to section 125 of title 23 of the U.S. Codes. Upon concurrence of a natural disaster or catastrophic failure by the Federal Highway Administration (FHWA), an Emergency Relief (ER) program will be administered by the California Department of Transportation (CALTRANS);

(9) All projects in the local agency application under the Act on FAS roads, which are to be financed in whole or in part from federal ER funds under an approved ER program, shall be transferred to and administered by CALTRANS in accordance with FHWA policy and procedures unless retained and administered by OES. A separate local agency-CAL TRANS state agreement will be entered into covering those ER projects that are transferred;

(10) CALTRANS, by agreement with OES, will be given authority to work directly with local agencies on projects that are transferred when ER funds are involved. CALTRANS will remit to the local agencies any and all amounts due them from the share of costs assessable against federal ER funds; and,

(11) When all work is satisfactorily completed and the agreement is administratively closed,

CALTRANS will provide all final documentation and the closing date of the agreement to OES. This will allow OES and CALTRANS to make a final settlement with local agencies on the approved and accepted projects relating to FAS routes, non-FAS routes and other public facilities restored or replaced under the Act.

(b) Special Procedures for School Districts:

(1) Upon implementation of the Act, OES will notify the Superintendent of Public Instruction of the availability of state financial assistance, providing copies of eligibility guidelines and instructions and forms, for distribution to affected school districts;

(2) An affected school district must submit a Project Application (OES 126, Rev. 1/03, incorporated by reference), to the Superintendent, within sixty (60) days from the date of the local proclamation. The director, or his/her designee, may extend this deadline only for unusual circumstances. When filing an application for assistance, an applicant must attach a separate List of Projects (OES 95, Rev. 7/01, incorporated by reference) for each affected school within the district. Formats other than the OES 95 may be substituted if they contain the required information. Prior to funding authorization, an applicant school district must also submit or have on file a resolution designating an authorized representative;

(3) After the review and approval of the application for assistance, the Superintendent will forward the original Project Application (OES 126, Rev. 1/03, incorporated by reference), list of projects, and any other supporting documentation to the director for processing by OES;

(4) After receipt of the application and a list of projects, OES will, if necessary, schedule an on-site review of all submitted items, which will be singly detailed on separate DSRs (OES 90s, Rev. 1/03, incorporated by reference). Under normal circumstances, the state will complete DSRs (OES 90s, Rev. 1/03, incorporated by reference) with cost estimates for an applicant agency within sixty (60) days from the date of the local agency application;

(5) The completed application will also include a computerized summary of all approved costs by line item. OES will send the completed application to the applicant's designated authorized representative for review and approval with an Applicant Approval Form (CDAA Form 3a, Rev. 1/03, incorporated by reference);

(6) Upon receipt of an Applicant Approval Form (CDAA Form 3a, Rev. 1/03, incorporated by reference), OES will process an allocation for the state share of approved costs through the State Controller's Office. An authorized representative's signature on the approval form allows the state to process an allocation of funds. An applicant does not forfeit the right to a fair hearing or an appeal, by signing an Applicant Approval Form (CDAA Form 3a, Rev. 1/03, incorporated by reference); and,

(7) Funds paid against approved claims will be disbursed to the appropriate County Office of Education. All school district applicants are required to comply with the provisions of the U.S. Department of Education, when federal school disaster assistance programs are implemented in accordance with Public Laws 81-815 and 81-874.

(c) Time Limitations for Work Completion:

(1) In the event of a director's concurrence with a local proclamation or a state of emergency proclamation involving no federal assistance, the deadlines shown below are set from the date of the local proclamation and apply to all projects. Applicants receiving federal major disaster or

emergency assistance are expected to comply with federal regulations, which establish deadlines according to the date that a major disaster or emergency is declared;

(2) Completion deadlines:

TYPE

MONTHS

Debris clearance

6

Emergency work

6

Permanent work

18

(3) The director may impose less stringent deadlines for work completion, if considered appropriate; or

(4) The director may extend work completion deadlines for extenuating circumstances or unusual project requirements beyond the control of an applicant. Requests for time extensions, with appropriate justification, shall be submitted by an applicant as soon as it becomes apparent that the applicable deadline cannot be met.

(d) Supplements:

(1) During the performance of approved work, an applicant may discover that actual project costs exceed the approved DSR estimate. A supplement should be requested:

(A) When there is a change in the scope or method of performing approved work; or,

(B) When it is discovered that there is a substantial cost overrun to perform approved work.

(2) An applicant may submit a supplement request for a substantial cost overrun, in letter form, to OES in a timely manner and, whenever possible, prior to the completion of the work in question. The request shall contain sufficient documentation to support the eligibility of all claimed work and costs. However, cost overruns may also be addressed at the time of Final Inspection;

(3) Requests for a change in project scope must be filed, in writing, prior to work commencement and shall contain sufficient documentation to support the eligibility of all additional proposed work and costs; and,

(4) OES shall formally notify the applicant of the determination. Approved supplements are processed in the same manner described above for a project application.

(e) State Share:

For any eligible project, the state share shall amount to no more than 75 percent of the total state eligible costs unless the local match is waived by either the director in accordance with section 8687.2 of the Government Code or by amendment to the Code. The state shall make no allocation for any project application resulting in a state share of less than two-thousand five-hundred dollars (\$2,500). This provision shall not apply to those project applications which result in a state share of \$2,500 or greater and are subsequently reduced.

(f) Advances:

(1) Funds may be advanced for up to ninety percent (90%) of an applicant's approved allocation. Requests for advances should be made using a Request for Advance of Funds (CDAA Form 3a, Rev. 1/03, incorporated by reference). No request for an advance will be processed prior to OES's receipt of a resolution designating an authorized representative. Advances shall be provided to applicants in order to meet current obligations and anticipated expenditures for a ninety (90) day period. The state reserves the right to request documentation justifying large advances.

(2) As a requirement of this program, an applicant must establish a special fund or account for the deposit of any state funds received. Under no circumstances should expenditures be made from this fund/account for non-approved disaster related items. Furthermore, all expenditures drawn on this account must be applied toward damages sustained from the specified disaster for which funds were advanced. Any interest earned from state funds is the property of the state and must be refunded.

(g) Loans and Deferred Payments:

(1) The director may loan money to a local agency, if in the director's opinion, the local agency is currently unable to meet its financial obligations under the Act.

(2) Money may be loaned to a local agency for purposes of ensuring that the local agency is able to meet its local share matching requirements; for the repair or replacement of a public facility, or, for any other purpose which the director considers a loan of money, necessary and appropriate.

(3) The loan agreement executed between the director and the local agency must comply with the State Contract Act and will provide for repayment of the principle and interest within ten years from the date of execution of the agreement. Interest will be estimated at an amount equal to the revenue which the state would have derived by investing the total loan amount, at the interest rate prevailing for legal state investments, on the date the loan is made.

## NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8680.5, 8682.8, 8685, 8685.2, 8685.4, 8685.6, 8685.8, 8686, 8686.1 and 8686.8, Government Code.

## HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 3-7-91 as an emergency; operative 3-7-91. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 16). A Certificate of Compliance must be submitted to OAL by 7-5-91 or emergency language will be repealed by operation of law on the following day.

3. Editorial correction of History 1. (Register 91, No. 16).

4. Readoption of emergency filed 3-7-91; operative 3-7-91. Readoption filed 7-2-91, pursuant to Government Code section 8682.9; operative 7-2-91 (Register 91, No. 40).

5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.

6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).

7. Amendment of section and Note filed 8-30-2001 as an emergency; operative 8-30-2001 (Register 2001, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-2001 or emergency language will be repealed by operation of law on the following day.

8. Certificate of Compliance as to 8-30-2001 order, including further amendment of section, transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).

9. Change without regulatory effect amending section filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

§2980. Final Claim Process.

(a) Forms:

After completing all approved work items, a local agency must file a final claim with OES. Final claim documents shall be completed and submitted within sixty (60) days of the completion of all eligible work items. Final claim documents are as follows:

Disaster Type

Final Claim Form

State-only under a director's concurrence with a local emergency or Governor's state of emergency proclamation and cost-share with federal programs other than FEMA

CDAAs Project Summary (CDAAs 4)

Project Summary Certification of Documentation (CDAAs Form 4a, rev. 1/03, incorporated by reference)

Cost share with FEMA disaster or emergency

Federal Project Listing (P.4)

(b) Claimed Costs:

When preparing a claim, all eligible items approved in the application must be included, even though the total amount expended may exceed the amount approved by OES. Substantial cost overruns in excess of the approved application amount shall be submitted to OES for approval prior to filing a final claim.

(c) Final Inspections:

(1) All costs and work items included in an applicant's claim are subject to final review and inspection by the state. OES or a state agency, assigned by OES, as authorized under section 8685.4 of the Code, may perform an on-site review of any or all completed work items. All supporting claim documentation must be at one specific location to facilitate inspection and audit processes. Inspectors shall have access to original source documentation at the time of final inspection; and,

(2) Final supplements to approved applications will cover cost over-runs and under-runs.

(d) Audits: The director shall conduct audits and investigations as necessary to ensure compliance with these regulations and, in connection therewith, may question such persons as may be necessary to carry out such audits and investigations. In order to make audits, examinations, excerpts and transcripts, Federal and State auditors, and the director, or their duly authorized representatives, shall have the right of access to any books, documents, papers, or other records which are pertinent to any activity undertaken or funded under these regulations. The rights of access shall last as long as the records are retained if retention exceeds what is required under these regulations.

(e) Retention Requirements for Records: The director will notify each applicant of the starting date of the retention period. The applicant shall retain all financial and program records, supporting documents, statistical records, and other records reasonably considered as pertinent to program regulations, or the grant agreement, for three years from the starting date of the retention period.

(f) Original Source Documentation: Microfilm, microfiche, or other representations of original source documents may be accepted in lieu of original source documents, if the local agency provides to OES an independent or internal auditor's report attesting to the accuracy of the alternate forms of original source documents.

(g) Final Funding Determination: Any funds owed to an applicant by the state shall be paid after final determination of eligible costs by OES, upon review of the final inspection report or audit. OES shall invoice applicants for funds owed to the state.

NOTE

Authority cited: Section 8682.9, Government Code. Reference: Sections 8682.8, 8683, 8685.4 and 8690.6, Government Code.

HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.
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3. Editorial correction of History 1. (Register 91, No. 16).
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5. New section refiled 10-30-91 as an emergency; operative 10-30-91 (Register 92, No. 6). A Certificate of Compliance must be transmitted to OAL 2-27-92 or emergency language will be repealed by operation of law on the following day.
6. New section filed 9-30-92; operative 10-30-92 (Register 92, No. 41).
7. Amendment filed 8-30-2001 as an emergency; operative 8-30-2001 (Register 2001, No. 35). A Certificate of Compliance must be transmitted to OAL by 12-28-2001 or emergency language will be repealed by operation of law on the following day.
8. Certificate of Compliance as to 8-30-2001 order, including further amendment of section, transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).
9. Change without regulatory effect amending subsection (a) filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).

#### §2990. Fair Hearing Process.

In the event of a dispute or grievance between the local agency and the state concerning the application, the following administrative procedures shall be followed by both parties, prior to either party seeking judicial review:

##### (a) Level One:

The local agency shall first discuss the grievance with the field representative assigned by the OES Disaster Assistance Division. If the grievance cannot be resolved at this stage, the local agency shall direct the grievance, together with any information in writing, to the deputy director, OES Disaster Assistance Division or his/her designee, within sixty (60) working days of receipt of notification of the issue to be grieved, unless this deadline is extended by OES. The grievance must state the issues in the dispute, the legal authority, or other basis for the local agency's position, and the remedy sought. The deputy director, OES Disaster Assistance Division or his/her designee, shall make a determination on the grievance within sixty (60) working days after receipt of the written communication from the local agency. The deputy director, OES Disaster Assistance Division or his/her designee, shall respond in writing to the local agency indicating the decision reached and the reasons therefore. Should the local agency disagree with this decision, the local agency may appeal to the second level.

(b) Level Two:

The local agency shall prepare a letter indicating why the deputy director of OES' Disaster Assistance Division's or his/her designee's decision is unacceptable, attaching to it the local agency's original statement of the dispute with supporting documents, together with a copy of the deputy director of OES' Disaster Assistance Division's or his/her designee's response. This letter shall be sent to the director of OES within sixty (60) working days from receipt of the deputy director of OES' Disaster Assistance Division's or his/her designee's decision, unless this deadline is extended. Based upon a request from the local agency, the director of OES may meet with the local agency representatives to review the grievance and the issues raised. The director of OES shall issue a written decision to the local agency within sixty (60) working days of receipt of the local agency's letter. This written decision shall be deemed a final judgment for purposes of this Fair Hearing Process.

NOTE

Authority cited: Section 8682.9, Government Code. Reference: Natural Disaster Assistance Act, Chapter 7.5, Division 1, Title 2 (Section 8680 et seq.), Government Code.

HISTORY

1. New section filed 10-19-90 as an emergency; operative 10-29-90. Submitted to OAL for printing only pursuant to Government Code section 8682.9 (Register 91, No. 2). A Certificate of Compliance must be submitted to OAL by 2-26-91 or emergency language will be repealed by operation of law on the following day.
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3. Editorial correction of History 1. (Register 91, No. 16).
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7. Certificate of Compliance as to 8-30-2001 order transmitted to OAL 12-26-2001 and filed 2-8-2002 (Register 2002, No. 6).
8. Change without regulatory effect amending section filed 12-19-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 51).